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In re Application of  
Tullis, Richard H.  
Serial No. : 08/078,768  
Filed : 16 July 1993  
Attorney Dkt No. : ISIS-4502

Decision on Petition

This letter is in response to the Petition under 37 C.F.R. 1.181, filed on 18 October 2004, to request reconsideration of the notice of defective appeal brief. The delay in acting on this petition is regretted.

**BACKGROUND**

A final rejection was mailed to applicants' representative on 12/15/2003. Applicants responded by filing an appeal brief on 4/15/2004 along with a number of additional references. Applicants' representative was sent a notice of defective appeal brief on 6/8/2004. Applicants responded by filing a second appeal brief on 7/8/2004, along with a number of additional references and a supplemental information disclosure statement. Applicants' representative was sent a second notice of defective appeal brief on 9/15/2004. On 10/18/2004, applicants' representative filed arguments in response to the second notice of defective appeal brief, a petition in which appellants argue that the second brief is not defective, and finally a third appeal brief.

## **DISCUSSION**

The application, prosecution history and petition have been reviewed and carefully considered. Applicants petition under 37 C.F.R. 1.181, to reconsider the determination of non-compliance under 37 CFR 1.192 of the Appeal Brief filed 8 July 2004.

The petition argues that citation of references not of record is not a valid reason for finding the Appeal Brief defective under 37 CFR 1.192. Applicants are correct.

However the filing of a third Appeal Brief on the same day as the petition was filed precludes the Office from entering the second Appeal Brief. The Third Appeal Brief will be considered by the Examiner and if found compliant with 37 CFR 1.192, an Examiner's Answer will be set forth.

It is noted that timeliness of evidence, declarations or affidavits is not grounds for considering an Appeal Brief Non-Compliant under 37 CDR 1.192. If evidence, declarations or affidavits are submitted in an untimely manner absent good and sufficient reasons for the delay, the Examiner may refuse entry of the evidence, declarations or affidavits under 37 CFR 1.195. When an application is after final, a refusal to enter untimely material would be communicated to Applicants by way of an Advisory Action so that the file record is clear as to what material is of record and under consideration.

If an Appeal Brief contains arguments directed to material not of record, the Examiner's Answer will note the arguments directed to evidence not of record are not sufficient to overcome any rejections and have not been considered further.

## DECISION

For the reasons set forth above, the Petition under 37 C.F.R. 1.181 to withdraw the notice of non-compliance under 37 CFR 1.192 is **DISMISSED** in view of the Appeal Brief filed 18 October 2004.

Any request for consideration of this petition decision must be filed within two (2) months of the mailing date of this decision.

This application will be forwarded to the Examiner for consideration of the Appeal Brief filed 18 October 2004.

Should there be any questions regarding this decision, please contact Special Program Examiner Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 703-872-9306.



Jasmine Chambers

Director, Technology Center 1600